

RULE REPEALED 2-24-97**R590. Insurance, Administration.****R590-104. Securities Custody by Clearing Corporations Filing of Securities by Date of Issue (FOSBI).****R590-104-1. Authority.**

This Rule is promulgated by the Insurance Commissioner pursuant to Section 31A-2-201(3) and 31A-2-211(2), Utah Code Annotated, which authorize rules to implement the Insurance Code, and Section 31A-2-206, U.C.A., which govern the custody of securities.

R590-104-2. Purpose and Scope.

The purpose of this Rule is to authorize insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates. This rule shall apply to all insurance company licensees in this State.

R590-104-3. Definitions.

As used in this rule:

A. "F.O.S.B.I." shall mean the filing of securities by date of issue with a clearing corporation.

B. "Clearing Corporation" shall mean a corporation, as defined under Section 70A-8-102(3), U.C.A., which is organized for the purpose of effecting transactions in securities by computerized book-entry.

R590-104-4. Rule.

A. An insurance company may, by written agreement with a custodian institution, provide for the custody of its securities, which securities may be held by the custodian in a clearing corporation or in the Federal Reserve book-entry system. Securities so held are referred to herein as "Custodial Securities."

B. Any such agreement shall be in writing and shall be authorized by a resolution of the Board of Directors of the insurance company or of an authorized committee thereof. The terms of the agreement shall comply with the following:

1. Certified securities held by the custodian shall be held either separate from the securities of the custodian and of all its other customers or in a fungible bulk of securities as part of a Filing of Securities by Issue (FOSBI) arrangement.
2. Securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the Federal Reserve book-entry system shall be separately identified on the custodian's official records as being owned by the insurance company. Said records shall identify

which custodied securities are held by the custodian or by its agent and which securities are in a clearing corporation or in the Federal Reserve book-entry system. If the securities are in a clearing corporation or in the Federal Reserve book-entry system, said records shall also identify where the securities are and if in a clearing corporation, the name of the clearing corporation and if through an agent, the name of the agent.

3. All custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

4. Custodied securities shall be held subject to the instructions of the insurance company, except that custodied securities used to meet the deposit requirements set forth in 31A-2-206(2) shall, to the extent required by that section, be under the control of the Insurance Commissioner and shall not be withdrawn by the insurance company without the approval of the Insurance Commissioner.

5. The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company.

6. During the course of the custodian's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, and any representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.

7. The custodian and its agents shall be required to send to the insurance company:

a. All reports which they receive from a clearing corporation or the Federal Reserve book-entry system on their respective systems of internal accounting control; and

b. Reports prepared by outside auditors on the custodian's or its agent's internal accounting control of custodied securities that the insurance company may reasonably request.

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8. The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting

schedules and information required in any audit of the financial statements of the insurance company.

9. The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits with respect to custodied securities. These shall be substantially in the form of "Custodian Affidavits, Forms A, B and C," published by NAIC Model Regulation Service, 298-4, 298-5 and 298-6, or the Proceedings of the NAIC, 1981 Proc. II, 406, 407 and 408, and are incorporated herein by reference. They are specifically identified as follows:

- a. "Form A," For use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere;
- b. "Form B," For use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity; and
- c. "Form C," For use where ownership is evidenced by book entry at a Federal Reserve Bank.

10. The custodian by agreement may be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction. The custodian as a minimum shall be obligated to indemnify the insurance company for any loss of custodied securities, except that the custodian shall not be so obligated to the extent that such loss was caused by other than the negligence or dishonesty of the custodian.

11. In the event that there is loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subsection (10) above, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities.

12. The agreement may provide that the custodian will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.

13. In the event that the custodian gains entry in a clearing corporation or in the Federal Reserve book-entry system through an agent, there shall be an agreement between the custodian and the

agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian, provided, however, that, if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian, the Insurance Commissioner of the state of domicile of the insurance company may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the custodian.

- **R590-104-5. Penalties.**

A. Insurance companies found after hearing or other legal process to be or to have been in violation of this rule shall be subject to fine, suspension, or revocation of license. Violators shall be subject to such other legal penalties or measures as deemed appropriate by the Insurance Commissioner.

B. Custodian institutions found after hearing or other legal process to be in violation of this rule shall be subject to removal as an approved custodian and shall be subject to such other legal penalties or measures as provided by law and deemed appropriate by the Insurance Commissioner.

R590-104-6. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions shall not be affected thereby.

R590-104-7. Effective Date.

The effective date of this rule is July 1, 1986.

KEY: insurance companies, securities

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